



Memphis and Shelby County Land Use Control Board

CITY HALL 125 NORTH MID AMERICA MALL MEMPHIS, TENNESSEE 38103-2084
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(Please visit our web site at: <http://www.dpdgov.com>)

MINUTES

Date: July 14, 2011

Meeting Attendance

LUCB Board Members

OFFICERS/MEMBERS	NAME	PRESENT	ABSENT
Chairman	James Toles	X	
Member	Loyal Featherstone	X	
Member	Rusty Linkous	X	
Member	Jon McCreery	X	
Member	Robert Norcross	X	
Member	Margaret Pritchard	X	
Member	Mary Sharp	X	
Member	Emily Trenholm	X	
Member	Lisa Wilbanks	X	
Member	Roslyn Willis	X	
Alternate Member	Frank Colvett, Jr.		X

Call to Order and Roll Call

Chairman James Toles called the meeting to order at 10:00 a.m. Don Jones called the roll. There was a quorum. Alternate Board member Colvett was not present during roll call.

LUCB Staff: Josh Whitehead, Director of Office of Planning and Development, Chip Saliba, Brian Bacchus, Don Jones, Gregory Love and Sheila Pounder.

Others Present: Rosalyn Gatewood, Edith Hurt, Christopher Jones, Harvey Marcum, David Milem, Mary Mitchell, Billy Orgel, Sharon Paige, David Porter, Michelle Smith and Brenda Solomito.

Chairman's Opening Remarks

Chairman Toles read the General Order of the Public Hearing proceedings and the Conflict of Interest Statement.

Secretary's Report

Chip Saliba stated there was not a report.

General Order of Public Hearing

Chairman Toles explained the procedure for hearing the applications; staff presentation for the application; applicant comments; comments from the public; time limits; rebuttal; and the

Commission's discussion and action. The Consent Agenda Items 1-5 were read. Chairman Toles also explained the procedure for hearing the Consent Agenda Items. He then introduced Board member Loyal Featherstone to read the Consent Agenda Items.

Consent Agenda (Items 1-9)

- 1. CASE NUMBER:** **S 11-010 CO**
DEVELOPMENT NAME: **TWIN PINES SUBDIVISION**
 Request: Three residential lots
 Staff's Recommendation: Approval with conditions.
- 2. CASE NUMBER:** **S 11-011**
DEVELOPMENT NAME: **SOUTHERN HEIGHTS SUBDIVISION**
 Request: 2 residential lots
 Staff's Recommendation: Approval with conditions.
- 3. CASE NUMBER:** **S 11-012**
DEVELOPMENT NAME: **SHELBY COUNTY CREDIT UNION SUBDIVISION**
 Request: Two (2) Lot Preliminary Plan
 Staff's Recommendation: Approval with (8) conditions.
- 4. CASE NUMBER:** **P.D. 99-330**
DEVELOPMENT NAME: **MORNING WOODS PLANNED DEVELOPMENT**
 Request: Modifications to Condition II.A.2. to allow a maximum building height of forty (40) feet in Parcel 1; to Condition V.A. to allow one (1) integrated center sign forty (40) feet in height a maximum of 400 sq. ft. in area and to allow each out-parcel one (1) detached sign ten (10) feet in height a maximum of 100 sq. ft. in area
 Staff's Recommendation: Approval with conditions.
- 5. CASE NUMBER:** **P.D. 00-363**
DEVELOPMENT NAME: **CRICHTON COLLEGE PLANNED DEVELOPMENT**
 Request: To place banner signs along Highland Ave. and on existing light poles in the south parking lot.
 Staff's Recommendation: Approval with conditions.
- 6. CASE NUMBER:** **PD 04-383 CC**
DEVELOPMENT NAME: **HOUSTON LEVEE TRAILS PLANNED DEVELOPMENT, A-4**
 Request: Approval of a Site Plan for a Retail Store – Dollar General Store
 Staff's Recommendation: Approval with conditions.
- 7. CASE NUMBER:** **PD 04-383 CC**
DEVELOPMENT NAME: **HOUSTON LEVEE TRAILS PLANNED DEVELOPMENT, A-4**
 Request: Approval of the proposed site plan for a O'Reilly Automotive Store
 Staff's Recommendation: Approval with conditions
- 8. CASE NUMBER:** **P.D. 07-312**
DEVELOPMENT NAME: **NORTH PARKWAY PLANNED DEVELOPMENT**
 Request: Revised Site Plan to allow use of existing building in lieu of the

demolition and construction of a new building and approval of a new Phasing Plan

Staff's Recommendation: Approval with two site plan conditions

9. CASE NUMBER: P.D. 07-338

DEVELOPMENT NAME: LEGENDS PARK PLANNED DEVELOPMENT

Request: Eliminate the proposed Legends Row right-of-way (Public Street) within Phase 5 and provide private drive access to Legends Park North Senior Multifamily Housing Development

Staff's Recommendation: Approval with conditions

Discussion Summary – Agenda Items 4, 5 and 6 were pulled for discussion. Board Member Featherstone made a motion to approve Consent Agenda Items 1, 2, 3, 7, 8 and 9. Board Member Linkous recused himself from voting on Item 4 and Board Member Willis recused herself from voting on Item 9. The motion was seconded by Board Member Pritchard. The motion passed unanimously.

Pulled Consent Agenda (Items 4, 5 and 6) for discussion

Chairman Toles called for the first Consent Agenda Item case.

Item 4: CASE #: P.D. 99-330

MORNING WOODS PLANNED DEVELOPMENT

Request for modifications to Condition II.A.2. to allow a maximum building height of forty (40) feet in Parcel 1; to Condition V.A. to allow one (1) integrated center sign forty (40) feet in height a maximum of 400 sq. ft. in area and to allow each out-parcel one (1) detached sign ten (10) feet in height a maximum of 100 sq. ft. in area.

Staff's Recommendation: Approval with 3 site plan conditions.

Chairman Toles asked if applicant was present and agreed with staff's recommendation.

Mr. Harvey Marcum approached and stated his name and address as 5880 Ridge Bend Rd. He requested to make a friendly amendment to staff's recommendation which was to reduce the Integrated Center Sign height from 40ft. to 35ft.

Chairman Toles allowed for the friendly amendment and staff agreed. Then Chairman Toles asked for a motion. Board member Featherstone made a motion to approved Case P.D. 99-330 in accordance with staff's recommendation and with the friendly amendment made to reduce the Integrated Center Sign height to 35ft. The motion was seconded by Board member McCreery. The motion passed unanimously.

Item 5: CASE #: P.D. 00-363

STONEBROOK COVE

Request to place banner signs along Highland Ave. and on existing light poles in the south parking lot.

Staff's Recommendation: Approval with conditions.

Chairman Toles asked if applicant was present and agreed with staff's recommendation and if there were any opposition. There was opposition. He then asked for staff to present the case to the board.

John Jones gave a summary of staff report, showing various aerial views of the case property which is now Victory University. He also showed photos of the surrounding residential properties and senior assisted living facility. He continued by making two friendly amendments to the conditions regarding paragraph (3): 1) with condition (5.A.9.) there be a total of 14 banners – 6 along Highland and 8 in the parking lot of the property and 2) with condition (5.D.), the statement ends with a period after “to allow for self parking” and strike the remainder of the statement.

Chairman Toles asked the applicant of the case for comments.

Mr. David Milem, a representative for applicant (Victory University) approached and stated his name and address as 2142 Nelson. He gave reasoning for the requested amendments for the signage. He felt that the additional signs/banners would give Victory University more visibility and convey public events to the neighborhood, general public and the traffic along Highland. He also requested to modify condition C.6. adding the language, “except for as provided in the previous approved conditions”. He felt that would allow them to proceed without additional submittal and approval of other signs.

Chairman Toles asked if there were opposition in attendance of the case for comments. There were no one present, only a letter that was submitted at the Executive Session.

Chairman Toles asked if staff was in agreement with the requested modification. Don Jones stated that the additional signage in the Parking Lot was a sufficient and adequate enough trade-off to allow to what was previously approved, so staff was not in agreement with any additional modifications.

Chairman Toles asked for a motion. Board member Featherstone made a motion to approve Case P.D. 00-363 in accordance to staff's recommendation and the two friendly amendments 1) there be a total of 14 banners – 6 along Highland and 8 in the parking lot and 2) with condition (5.D.), the statement ends with a period after “to allow for self parking” and strike the remainder of the statement.. The motion was seconded by Board member Pritchard.

Chairman Toles open the floor for board discussion.

The board discussion consisted of Mr. Milem addressing the board again, explaining the approved monument signs and how they would not be sufficient attention for Victory University for the general public as well as perspective students. Board member Pritchard asked where the locations of the monument signs. It was stated by Mr. Milem one each would be placed on the west side of Highland street and at the NE and SE corners of the case property facing Highland.

There being no more discussion, Chairman Toles asked for a vote. The motion passed

unanimously only as staff recommended with the two (2) friendly amendments. The requested modification to condition (C.6.) was rejected.

Item 6: CASE #: PD 04-383 CC HOUSTON LEVEE TRAILS PLANNED DEVELOPMENT, A-4

Request for approval of a Site Plan for a Retail Store – Dollar General Store.

Staff's Recommendation: Approval with conditions

Chairman Toles asked if staff would present the case and if there were any opposition. There was opposition.

Chairman Toles asked the applicant had any specific concerns that could be addressed without a staff presentation/report.

David Porter, a representative for applicant approached and stated her name and address as 4821 American Way. He stated that he had spoke with staff and they came to an agreement on page 8 and condition 3 of staff report.

Don Jones read the language of the amendment to the condition that stated, "building elevation would show a minimum of 75% of masonry or glass materials on three sides of the building" meaning it would not be on the rear elevation of the building. Don Jones also, noted two typo errors to be revised in conditions 7 & 8 regarding the plat book and page number which should be page 54 and not 45.

Chairman Toles asked for a motion. Board member Featherstone made a motion to approve Case PD 04-383 CC in accordance to staff's recommendation and the amendment to condition 3 on page 8 of staff report and the revision of the typo to conditions 7 & 8 which should read plat book page number 54 and not 45. The motion was seconded by Board member Pritchard. The motion passed unanimously.

REGULAR AGENDA ITEMS

Chairman Toles introduced Board member Pritchard to read the Regular Agenda Items and serve as Zoning Chair.

Item 10: CASE #: SUP 11-209 NW INTERSECTION OF JOY LANE & I-240

Request for Juvenile Transitional Housing Facility.

Staff's Recommendation: Approval with conditions

Chairman Toles asked if the applicant was present and if there were any opposition. There was no opposition. Chairman Toles asked if the applicant agreed with staff's recommendation.

Ms. Sharon Paige approached and stated her name and address as 4419 Berkley Woods Dr. and that she agreed with staff's recommendation and conditions.

Chairman Toles asked the board members for a motion. Board member Pritchard made a motion to approve case SUP 11-209 in accordance with staff's recommendations. The motion was seconded by Board member Featherstone. The motion passed unanimously.

Item 11: CASE #: SUP 11-210 WEST SIDE OF HAYNES ST; (+/-) 404 FT. S OF PARK
 Request for a Cellular Tower
 Staff's Recommendation: Denial

Chairman Toles asked if the applicant was present and if there were any opposition. There was opposition. He then asked staff to present the staff report.

Board member Trenholm stated to the Chairman that she wanted to recuse herself on this case.

Greg Love gave a summary of staff report, showing various aerial views and location of the case property. He also showed photos of the surrounding residential properties to give an idea of the character of the neighborhood. Greg stated his concerns and reason for denial was the proximity of the proposed Tower to the residential neighborhood on Haynes and the effect it would pose on the character of the neighborhood. He even mentioned a discussion with the applicant regarding an alternate location for the Tower. He also added that he had gotten several calls and letters of opposition which was distributed to the LUCB members.

Chairman Toles asked if the applicant would be willing to place the application on hold for 30 days until further discussion with staff and the residents in opposition.

Ms. Brenda Solomito approached and stated her name and address as 2067 Kirby Pkwy. She stated she met with about 20 residents in the area to discuss the case. She stated that she presented a letter of support from Cricket. She added that she asked the residents who were present if they could suggest another location within the area for the Tower and their response was, they did not want a Tower in the area period.

Chairman Toles then asked if the applicant would present their case and offer further comments.

Mr. Billy Orgel approached and stated his name and address as 4091 Viscount Ave. He stated that he wanted clarity from the conversation he just had with staff in the hallway in regards to adhering to the suggestion from staff to relocation the Tower to the West of the proposed site behind the Post Office would it grant a recommendation of approval from staff. Mr. Orgel asked if Greg or Josh Whitehead could respond. He gave a brief history of how they strategically target areas for Towers, after clients (various cell phone carriers) employ their services. He then mentioned several Towers in close proximity of the propose site. He also stated the importance of having Towers in the area due to most residents use and depend on cell phones as their primarily phone verses having a land line phone connection in the home.

Greg stated that the application is now in the hands of the LUCB to make a decision or offer an alternative. Josh stated that since the location was the major concern for denial, the relocation of

Tower on the West could warrant an approval from staff when a site plan was submitted for the alternate location.

Chairman Toles asked for comments from the general public that were in opposition of the case.

Mrs. Michelle Smith who resides at 2757 Select Ave., stated that there's nothing in their community remotely compatible to a 160ft. Tower. She stated that she was in attendance of the Monday night meeting and she was in opposition then as well as now. She stated that she's even more in opposition today due to the talk of an alternative location because none of the residents have had time to do any research or review the new proposed location.

Mrs. Rosalyn Gatewood who resides at 857 Boston St., stated that she had not received any letter of today's meeting and that she haphazard heard about it and attended. She also stated that the proposed area is not an isolated area, it is a vibrant community filled with families and residents. She was upset due the fact, the applicant want to place the Tower on a lot where there's a playground and school for families and their children.

Mrs. Mary Mitchell who resides at 2866 Douglass repeatedly stated that she vehemently opposed the cell phone tower being built in community of Orange Mound.

Mrs. Edith Hurt who resides at 2921 N. Radford stated she does not want see at anytime a "Metal Monstrosity" in the middle of a Historic District.

Chairman Toles asked for rebuttal comments from the applicant.

Mr. Billy Orgel approached again and stated that there were 153 notices sent to residents in the area regarding intention of erecting a tower. He stated that all of their towers consideration is taking regarding safety because fencing surrounds each tower. He again mentioned the letter of support and need of the tower from Cricket and the fact of providing utility services to the community that in otherwise would have "dead zone" cellular service.

Chairman Toles asked the board members for a motion. Board member Pritchard made a motion to hold case SUP 11-210 due the residents being confused of the electrical currents that may have an adverse affect on health and safety of the children and the re-submission of a specific graphic for the new proposed location of the tower. The motion to hold for 30 days was seconded by Board member Featherstone.

Board Member McCreery felt that the emotions from the residents were not going to change and the a vote should be taken, either to deny or approve the application instead of waiting 30 days.

Chairman Toles stated he did not have enough information to vote in favor of the application or for the alternative location at that time.

Board Member McCreery requested to ask the applicant what would happen if the tower did fall. Chairman Toles allowed the question.

Mr. Orgel stated that a "fall zone" was not in the ordinance but their towers were built to fall and break on top of themselves. He stated their designed fall like that and it happens automatically at the break point. He also mentioned the Federal Telecommunications Act of 1996 which prohibits denial of cell phone towers without substantial evidence from a National Report or Study documenting direct affect as the cause to any health issues.

Chairman Toles re-stated the motion on the floor which was to hold the application for 30 days and that there was a second. He asked if there were any further discussion.

Board Member Pritchard asked if she could recognize someone from the general public to speak. Chairman Toles allowed for the recognition.

Mr. Christopher Jones approached and gave comments of why he strongly feels the tower is not needed, especially the location of the proposed tower. He stated that the Orange Mound Community has enough problems now that the City has no concern about. He also stated that the students, children and families are good products of the community and he did not want to see the people or the community to die.

Chairman Toles asked for a vote on the hold motion. The motion passed with a 7-2 vote. Board members Norcross and McCreery voted against the motion and Board Members Featherstone, Linkous, Pritchard, Sharp, Wilbanks, Willis and Chairman Toles voted for the motion. Board member Trenholm had recused herself.

Item 12: CASE #: Z 11-105

SOUTH SIDE OF MONROE (+/-) 146.0 FT. EAST OF FLORENCE ST.

Request to re-zone from RU-3 (Residential Urban-3) to CMU-1 (Commercial Mixed Use-1) District

Staff's Recommendation: Approval

Chairman Toles asked if the applicant was present and if there were any opposition. There was no opposition. Chairman Toles then recognized John Jones to present an amendment.

Chairman Toles asked if the applicant agreed with staff's recommendation and friendly amendment.

Mr. Harvey Marcum approached and stated his name, address as 5880 Ridge Bend Rd. and that he agreed with staff's recommendation.

Chairman Toles asked the board members for a motion. Board member Pritchard made a motion to approve case Z 11-105 in accordance with staff's recommendation. The motion was seconded by Board member Wilbanks. The motion passed unanimously.

ADJOURNMENT:

There being no further business, the meeting there upon adjourned.

MINUTES APPROVED: _____

8/11/11



CHAIRMAN



SECRETARY